IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1944 OF 2005

1. Dipan Jugal Kishore Mehta)
)
2. Padmavati Jugalkishore Mehta)
)
Both resident of 24, Rajmahal)
CHS Ltd., M.V.Road,Andheri(E),)
Mumbai - 400 069.)..Petitioners.

V/s.

1. Yogesh Jugalkishore Mehta,)
73, Vaibhav Apartment, S.K.Bhole)
Road, Agar Bazar, Dadar (W),)
Mumbai- 400 029.)
)
2. Bussa Udyog Bhavan Industrial)
Premis Co-op. Soc. Ltd. Tokersey)
Jivraj Road, Sewree (W),)
Mumbai-400 015.)
)
3. The Asstt. Registrar, C.S.F./S Ward,)
Mumbai, Malhotra House, 6th Floor,)
Opp. G.P.O. Fort,Mumbai-1.)..Respondents.

Mr.Santosh Shetty with M.M.Vashi for petitioners.

Mr.V.D. Patil for respondent No.1.

None for respondent No.2.

Mr.P.V. Dhopatkar, A.G.P. for respondent No.3.

CORAM : J.P.DEVADHAR, J.

DATED : 30TH AUGUST, 2006.

ORAL JUDGMENT

1. Petitioners have challenged the order passed by

the Divisional Joint Registrar, C.S. Mumbai Division, Mumbai dated 2nd May, 2005. By the said order, the Divisional Joint Registrar has set aside the order passed by Assistant Registrar Co-operative Societies F/South Ward, Mumbai dated 30th June, 2003 allowing the appeal filed by the petitioner No.1 under section 23(2) of the Maharashtra Co-operative Societies Act, 1960.

2. The dispute in the present petition pertains to transfer of membership by transferring shares bearing Nos. 16 to 20 in respect of gala Nos.23 & 24 situate in the building belonging to the respondent No.2 Society.

3. One Mr.Jugalkishore Chotalal Mehta, Proprietor of M/s.Mehta Brothers was the owner of godown bearing Nos. 23 & 24 situated on the ground floor of the building belonging to the respondent No.2 Society. The share certificates bearing Nos.16 to 20 issued by the society in respect of the said galas were in the name of M/s.Mehta Bros., a sole proprietory concern of Mr.Jugalkishore Mehta. Mr.Jugalkishore Mehta died on 6th November, 2000. On 8th March, 2002 the petitioner No.1 applied to the Society seeking membership and transfer of shares in respect of the aforesaid two galas on the basis of the nomination form executed by the said Mr.Jugalkishore Mehta prior to his death. By a letter dated 20th March, 2003

the Secretary of the Society rejected the application in view of the objections raised by the respondent No.1.

4. Thereupon, the petitioner No.1 filed an appeal under section 23(2) of the Maharashtra Co-operative Societies Act, 1960 and by an order dated 30th June, 2003 the Asstt. Registrar, Co-operative Societies allowed the appeal and directed the respondent No.2 Society to transfer the shares bearing Nos.16 to 20 in respect of gala Nos.23 & 24 in favour of petitioner No.1 and make necessary entries in the records of the Society to that effect. Accordingly, the society has transferred the shares in the names of the petitioner No.1 on 30th August, 2003.

5. Challenging the aforesaid order dated 30/6/2003, the respondent No.1 filed a Revision Application before the Divisional Joint Registrar, Co-operative Societies, Mumbai and by the impugned order dated 2nd May, 2005 the Divisional Joint Registrar allowed the revision application and set aside the order of the Assistant Registrar dated 30th June, 2003. Challenging the aforesaid order dated 2/5/2005, the present petition is filed.

6. It is well settled in law that in the case of

Co-operative Societies, where on the death of a member the shares held by the deceased are transferred to the nominee / nominees on the basis of nomination, such transfer does not affect the rights of the other legal heirs of the deceased and that the membership rights conferred on the nominee / nominees subsists only till the entire estate of the deceased is administered in accordance with law.

7. In the present case, based on the nomination form executed by Mr.Jugalkishore Mehta in favour of the petitioner No.1, the Asstt. Registrar has directed the Society to grant membership to the petitioner No.1. In the Revision application, though the respondent No.1 had alleged that the signature of the deceased Mr.Jugalkishore Mehta on the nomination form is forged, the same was not substantiated before the Divisional Joint Registrar. Moreover, the respondent No.1 had claimed that the member Mr.Jugalkishore Mehta had executed a joint nomination in favour of the petitioners and the respondent No.1, but the same was also not substantiated before the Divisional Joint Registrar.

8. By the impugned order dated 2/5/2005 the Divisional Joint Registrar has set aside the order of the Asstt. Registrar on the grounds that:-

a) M/s.Mehta Bros. was the member and the nomination form is not signed by the member but by Mr.Jugalkishore Mehta who was not a member;

b) nomination bears no date;

c) nomination is not registered; and

d) there is dispute between the legal heirs.

9. As stated earlier, transferring shares of the deceased to the nominee does not confer absolute right to the nominee over the transferred property to the exclusion of other legal heirs of the deceased. On such transfer, the nominee steps into the shoes of the deceased member, till the rights of the persons entitled to the estate or interest of the deceased member by virtue of the law of succession is determined.

10. Admittedly, M/s.Mehta Bros. was the sole proprietary concern of Mr.Jugalkishore Mehta. Therefore, the nomination form signed by Mr.Jugalkishore Mehta cannot be said to be invalid. The fact that the nomination form does not bear date or the fact that there is dispute between the legal heirs of the deceased would not invalidate the nomination form. The Society has admitted that Mr.Jugalkishore Mehta, sole proprietor of M/s.Mehta Bros. had submitted a nomination form in favour of the

petitioner No.1 but the society declined to transfer the shares in view of the dispute between the legal heirs of the deceased. As stated earlier, the rights of the legal heirs of the deceased has to be established by initiating proceedings in a competent Court and in fact, the respondent No.1 has filed a Testamentary Suit bearing No.176 of 2005 and the same is pending before this Court. In this view of the matter, the order passed by the Asstt. Registrar, Co-operative Societies cannot be faulted.

11. Accordingly, the order passed by the Divisional Joint Registrar is quashed and set aside. The petitioner No.1 is directed not to transfer of dispose of or create any third party rights in respect of Gala Nos.23 & 24 and the share certificates in respect thereof for a period of 12 weeks so as to enable the respondent No.1 to obtain appropriate orders from this Court in the Testamentary Suit No.176 of 2005. All contentions of both parties are kept open.

12. Rule is made absolute in terms of above order with no order as to costs.

(J.P. DEVADHAR, J.)